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 California Court of Appeal, (Ret.);  
 American Academy of Matrimonial Lawyers  
 (Northern California Chapter)

**UNITED STATES COURT OF APPEALS  
 FOR THE NINTH CIRCUIT**

KRISTIN M. PERRY, et al.,  
 Plaintiffs,  
 and  
 CITY AND COUNTY OF SAN  
 FRANCISCO,  
 Plaintiff-Intervenor,  
 v.  
 ARNOLD SCHWARZENEGGER, et  
 al.,  
 Defendants,  
 and

**MOTION BY JUSTICE DONALD B.  
 KING, (RET.), AND THE  
 AMERICAN ACADEMY OF  
 MATRIMONIAL LAWYERS  
 (NORTHERN CALIFORNIA  
 CHAPTER) FOR LEAVE TO FILE  
 A BRIEF AS AMICI CURIAE IN  
 SUPPORT OF PLAINTIFFS-  
 APPELLEES**

PROPOSITION 8 OFFICIAL  
PROponents DENNIS  
HOLLINGSWORTH, et al.,

Defendant-Intervenors.

The Honorable DONALD B. KING, a retired justice of the California Court of Appeal, and THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS (NORTHERN CALIFORNIA CHAPTER) hereby move for leave to file a brief as amici curiae in support of the Plaintiffs-Appellees in the above-captioned matter. Federal Rule of Appellate Procedure 29(b) allows a party to seek leave to file a brief as *Amicus Curiae* where the party has an interest in the issues on appeal and when the party asserts matters that are relevant to the disposition of the case. This Court has broad discretion to permit a third party to participate in an action as *Amicus Curiae*. See, e.g., *Gerritson v. de la Madrid Hurtado*, 819 F.2d 1511, 1514 n.3 (9th Cir. 1987).

This Motion is being filed concurrently with the Brief that *Amici Curiae* propose for filing.

## **I. THE PARTIES' INTERESTS**

### **A. Justice Donald B. King, (Ret.)**

Justice King has worked indefatigably for more than three decades to improve the practice of family law in California. Appointed to the Superior Court in 1976, he initiated the practice of mediation to aid families in resolving child custody disputes and he helped to promulgate uniform rules regarding family law matters for the San

Francisco Bay Area county courts. Justice King served on the California Court of Appeal for 13 years, where he authored more published opinions in family law cases than any appellate justice in California's history. Since retirement in 1996, Justice King has been associated with the American Arbitration Association, providing services for private dispute resolution in family law cases.

Justice King co-authored the pre-eminent family law treatise in California, the California Practice Guide - Family Law (The Rutter Group) and he has taught family law at several Bay Area law schools. Justice King has received numerous awards, including the California State Bar Judicial Officer of the Year, which was renamed by the State Bar in his honor, and the National Public Service Award of the American Academy of Matrimonial Lawyers.

Justice King seeks to appear as *Amicus Curiae* on behalf of plaintiffs-appellees in this action as part of his lifelong work in support of the institution of marriage, which he believes should not be denied to one class of people on the basis of sexual orientation.

**B. The American Academy of Matrimonial Lawyers (Northern California Chapter).**

The American Academy of Matrimonial Lawyers (“AAML”) was founded in 1962, by highly regarded domestic relations attorneys “[t]o provide leadership that promotes the highest degree of professionalism and excellence in the practice of family law.” The Academy Fellows are highly skilled negotiators and litigators who

represent individuals in all facets of family law. These areas include divorce, annulment, prenuptial agreements, postnuptial agreements, marital settlement agreements, child custody and visitation, business valuations, property valuations and division, alimony, child support and other family law issues. These Fellows are generally recognized by judges and attorneys as preeminent family law practitioners with a high level of knowledge, skill and integrity.

There are currently more than 1600 Fellows of the AAML in 50 states. The Northern California Chapter of the AAML consists of 82 Fellows who are California certified family law practitioners and who practice family law in Northern California. These Fellows of the AAML are devoted to the protection of children and their families.

At its 2004 annual meeting in Chicago, the AAML approved, by overwhelming margins, two resolutions in support of the legalization of marriage between same-sex couples. The resolutions stated:

**BE IT RESOLVED** that the American Academy of Matrimonial Lawyers supports the legalization of marriage between same-sex couples and the extension to same-sex couples who marry and their children of all the legal rights and obligations of spouses and children of spouses.

and

**BE IT RESOLVED** that the American Academy of Matrimonial Lawyers encourages the United States Congress and the legislatures of all states to achieve the legalization of marriage between same-sex couples and the extension to same-sex couples

who marry and their children of all the legal rights and obligations of spouses and children of spouses.

## **II. STATEMENT OF REASONS WHY THE BRIEF OF AMICI CURIAE IS DESIRABLE AND RELEVANT TO THE DISPOSITION OF THIS CASE**

Both Amici appear on behalf of Plaintiffs-Appellees as part of their work in support of the institution of marriage and stable families. For decades, Amici have been on the ground dealing with the real-world consequences of California's marriage laws. From this everyday experience, Amici have had a unique opportunity to view the practical effects of these laws on children in California. As set forth herein, Amici respectfully submit that Proposition 8 is harmful to California's children, and that Appellants' arguments to the contrary are incorrect.

Appellants' Opening Brief ("AOB") seeks to justify excluding same-sex couples from the fundamental right to marry – and, by extension, the children of those couples from being part of a married family – by an irrational set of premises which are unsupported by longstanding California precedent and by the California Family Code. Under both their Due Process and Equal Protection arguments, Appellants rely on stability of the family, procreation, and channeling biological drives as the asserted rational bases for Proposition 8. These Amici agree that stability of the family is one of the advantages of marriage, but disagree that only heterosexual couples provide that stability. Appellants' assertion that a rational basis for the exclusion lies in fostering procreation is not only contrary to California's enunciated public policy, but it is

entirely irrational and discriminatory. Finally, Appellants' reliance on channeling biological drives is an argument in favor of same-sex marriage – and an irrational basis for the exclusion.

The Brief of these *Amici Curiae* focuses upon how same-sex marriage is necessary to provide equality for families under California family law, protect the children of same-sex couples, and guarantee the equal protection of those children under the law. It is relevant to the disposition of this case because it addresses a central tenet of Appellants' argument, which claims that a prohibition of same-sex marriage is necessary in order to protect children and preserve families.

### III. CONCLUSION

Justice King and the AAML respectfully request leave to file their brief as *Amici Curiae* in support of Plaintiffs-Appellees. That brief has been filed concurrently with this motion.

Respectfully submitted,

/s/ Diana E. Richmond

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 22, 2010.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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